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OFFICE OF PETITIONS

In re Patent No. 7,268,223 :
Renauld et al. : LETTER REGARDING
Issue Date: September 11, 2007: PATENT TERM ADJUSTMENT
Application No. 09/919,162 : and
Filed: July 31, 2001 : NOTICE OF INTENT TO ISSUE
Atty Docket No. 8702.0198-00 : CERTIFICATE OF CORRECTION

This is in response to the NOTICE OF POSSIBLE USPTO ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT AND REQUEST FOR CLARIFICATION OF CALCULATION filed November 8, 2007. Pursuant to patentee's duty of good faith and candor, patentee discloses that the patent term adjustment set forth in the Issue Notification (and on the patent) of four hundred forty-four (444) days should be corrected to forty-three (43) days.

The request for correction of the patent term adjustment indicated in the patent is **GRANTED to the extent indicated herein.**

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of three hundred twenty-nine (329) days.

On September 11, 2007, the above-identified application matured into U.S. Patent No. 7,268,223, with a revised Patent Term Adjustment of 444 days. Patentees state no basis for their disclosure that the revised Patent Term Adjustment should be 43 days.

Nonetheless, a review of the application file reveals that the patent term adjustment of 444 days is incorrect. A review of

the application file reveals that the period of adjustment of 197 days entered for Office delay and the period of reduction of 166 days entered for Applicant delay are incorrect.

First, the Office's mailing of the notice of allowance on May 7, 2007 did not constitute examination delay, and thus, did not warrant entry of a period of adjustment of 197 days. 37 CFR 1.702(a)(2) provides that grounds for adjustment include Office failure to:

Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

The notice of allowance was mailed in response to, and within four months of, applicant's responses filed March 15, 2007 and April 10, 2007. Thus, there were no grounds for adjustment pursuant to 37 CFR 1.702(a)(2).

However, there was Office delay in responding to applicant's response filed June 22, 2006. The Office did not mail the Office communication in response until February 15, 2007, four months and 116 days later. Accordingly, the period of adjustment of 197 days is being removed and a period of adjustment of 116 days is being entered.

Second, applicant's filing of a response on June 6, 2005 was incorrectly calculated as an applicant delay within the meaning of 37 CFR 1.704(b) for applicant taking in excess of three months to respond to the Office action mailed September 22, 2004. However, under this circumstance, this is not the proper basis for calculating applicant delay. The response was received outside of the statutory period for reply along with a petition to revive. The application had become abandoned. Thus, applicant failed to engage in reasonable efforts to conclude examination of the application by allowing the application to become abandoned for failure to prosecute. Pursuant to 37 CFR 1.704(c), circumstances that constitute a failure to engage include:

(3) Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any,

beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

- (i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or
- (ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed;

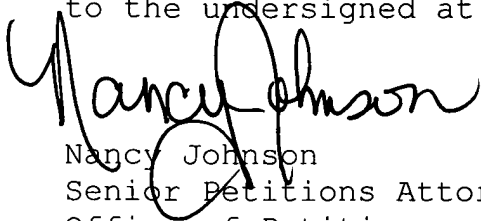
The period of reduction is properly calculated pursuant to 37 CFR 1.704(c)(3). The instant application became abandoned effective December 23, 2004 for failure to file a response to the non-final Office action mailed September 22, 2004. It is noted that the decision on petition mailed July 11, 2005 incorrectly states that the date of abandonment is March 23, 2005. This date of abandonment is incorrect because no extension of time for reply was filed. As such, the application became abandoned at the end of the shortened statutory period for reply on December 23, 2004. The period of reduction is 200 days, counting the number of days beginning on December 23, 2004, the date of abandonment, and ending on July 11, 2005 (the earlier date) the date of mailing of a decision reviving the application. Accordingly, the period of reduction of 166 days is being removed and a period of reduction of 200 days for applicant delay is being entered.

In view thereof, the patent should have issued with a revised patent term adjustment of 329 days.

As this letter was submitted as an advisement to the Office of errors in Patentees' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office. A review of the application history did not reveal a basis for reducing the patent term adjustment to 43 days. Patentee is under a continuing duty of candor to advise the Office of any specific reduction or unwarranted adjustment in this application.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by three hundred twenty-nine (329) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,268,223 B2

DATED : **September 11, 2007**

DRAFT

INVENTOR(S) : Renauld et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 444 days

Delete the phrase “by 444 days” and insert – by 329 days--